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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

SAMY ABDOUN,  
Plaintiff and Respondent,  
v.

VICTORIA ROBERTSON,  
Defendant and Appellant.

A158801

(San Francisco County Super.  
Ct. No. FMS-13-386502)

Victoria Robertson appeals from an August 7, 2019 restraining order after hearing, which order included a domestic violence restraining order against her for “disturbing the peace,” and also awarded custody of her minor child, six-year-old S.R., to his father Samy Abdoun. We affirm.

**BACKGROUND**

On June 11, 2019, Abdoun filed a request for domestic violence restraining order (DVRO), and the matter came on for hearing on August 7, following which the court issued the order Robertson appeals here. The DVRO was essentially based on the evidence that Robertson was cutting herself, including in the presence of S.R., and was suicidal. As even Robertson’s own brief admits, evidence of this came via testimony of Abdoun and from e-mails before the court, including from Robertson herself.

Robertson has filed a 64-page opening brief that asserts three arguments: (1) “early court documents” were missing from the file; (2) “no actual evidence nor corroborating testimony was presented to support appellant’s alleged ‘cutting’ incident and a pattern of suicidal threats”; and (3) “it is not in the best interests of the child to have [Abdoun] awarded sole and permanent custody . . . since the trial court did not have the full, true and correct case file in front of it.”

As best we understand the first and third arguments, they are that the trial court did not have before it filings that had been made years before, some from as early as 2013. These, of course, were not involved in the matter before the court in 2019, as the trial court explained: “[W]hat the Court has to go [on] is what has been filed in this case, what is before me. What is before me is Mr. Abdoun’s request for a restraining order. So, I am listening to everything both sides are saying, but we are not here to relitigate a domestic violence case that was already litigated.”

As to her second argument, which references the “cutting” and “suicidal,” Robertson’s argument seems to be that there was no corroboration for Abdoun’s testimony, that the e-mails did not support the DVRO, and that the trial court failed to question Abdoun about certain things. As to this, we note that we do not reweigh the evidence nor do we reassess credibility. (*Johnson v. Pratt & Whitney Canada, Inc.* (1994) 28 Cal.App.4th 613, 622.)

Robertson has not shown that the order was error. And her appeal must fail, for reasons both procedural and substantive.

## **DISCUSSION**

We begin with a few observations. Robertson has chosen to represent herself on appeal, which, of course, is her right. But a person “who exercises the privilege of trying [her] own case must expect and receive the same

treatment as if represented by an attorney—no different, no better, no worse.” (*Taylor v. Bell* (1971) 21 Cal.App.3d 1002, 1009.) Moreover, “as is the case with attorneys, pro. per. litigants must follow correct rules of procedure.” (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247.)

As an appellate court, we rely entirely on the written record, the completeness of which is the responsibility of the appellant, here Robertson, and error is never presumed. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133; *Southern California Gas Co. v. Flannery* (2016) 5 Cal.App.5th 476, 483.) Put slightly differently, Robertson has the burden of demonstrating error. (*In re Marriage of Gray* (2002) 103 Cal.App.4th 974, 978.) She has not done so.

Moreover, Robertson has filed a brief that in many respects does not comply with the appellate rules or authorities applying them, many of which we discussed in *In re Marriage of Davenport* (2011) 194 Cal.App.4th 1507. There, appellant Jill filed a brief that ignored many of the governing principles, causing us to observe as follows:

“California Rules of Court, rule 8.204(a)(2)(C) provides that an appellant’s opening brief shall ‘[p]rovide a summary of the significant facts . . . .’ And the leading California appellate practice guide instructs about this: ‘Before addressing the legal issues, your brief should accurately and fairly state the critical facts (including the evidence), free of bias; and likewise as to the applicable law. [¶] Misstatements, misrepresentations and/or material omissions of the relevant facts or law can instantly “undo” an otherwise effective brief, waiving issues and arguments; it will certainly cast doubt on your credibility, may draw sanctions [citation], and may well cause you to lose the case!’ (Eisenberg et al., Cal. Practice Guide: Civil Appeals

and Writs (The Rutter Group 2010) ¶ 9:27, p. 9-8 (rev. # 1, 2010), italics omitted.) Jill’s brief ignores such instruction.

“Jill’s brief also ignores the precept that all evidence must be viewed most favorably to Ken and in support of the order. (*Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 925–926.)” (*In re Marriage Davenport, supra*, 194 Cal.App.4th at p. 1531.)

As to Robertson’s first and third arguments, that the records before the court were not complete, the most fundamental principle of appellate review is that “ ‘A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it . . . and error must be affirmatively shown.’ ” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) And one of those presumptions is that the record has sufficient evidence to sustain the trial court’s findings of fact. (*In re Marriage of Fink* (1979) 25 Cal.3d 877, 887; *Schellinger Brothers v. Cotter* (2016) 2 Cal.App.5th 984, 998.)

And as to her second argument, which essentially asserts that an issue of fact is not supported, Robertson is required to “ ‘set forth in [her] brief all the material evidence on the point and not merely [her] own evidence. Unless this is done the error is deemed to be waived.’ ” (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.)

But even assuming that her arguments were not waived, they would fail on the merits, as Robertson has not demonstrated that the order was wrong—that it was an abuse of discretion.

### ***The Standard of Review is Abuse of Discretion***

As noted, Robertson appeals two aspects of the August 7, 2019 order, the first issuing a DVRO against her, the second awarding custody to Abdoun.

California law has a comprehensive statutory scheme aimed at the prevention of domestic violence: the Domestic Violence Protection Act (DVPA) found at Family Code sections 6200 et seq.<sup>1</sup> Section 6220 sets forth the purpose of the DVPA: (1) to prevent the recurrence of acts of domestic violence and (2) to provide for a separation of those involved in order to resolve the underlying causes of the violence.

Our colleagues in Division One distilled the applicable law in *In re Marriage of Evilsizor & Sweeney* (2015) 237 Cal.App.4th 1416, 1424 (*Evilsizor*): “A court may issue an order enjoining specific acts of ‘abuse’ (§ 6218, subd. (a)), which are defined as, among other things, behavior that could be enjoined under section 6320. [Citation.] Section 6320, in turn, permits a court to enjoin a party from engaging in various types of behavior, including ‘disturbing the peace of the other party.’ (§ 6320, subd. (a).) ‘[T]he plain meaning of the phrase “disturbing the peace of the other party” in section 6320 may be properly understood as conduct that destroys the mental or emotional calm of the other party.’ (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1497 (*Nadkarni*).)”

In short, “abuse” is “not limited to the infliction of physical injury or assault,” but also includes “mental or emotional” harm as well. (*Evilsizor, supra*, 237 Cal.App.4th at p. 1425; see generally Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2019) ¶ 5:67b and numerous cases there cited.) And the phrase “disturbing the peace” must be broadly construed in order to accomplish the purpose of the DVRO. (*Nadkarni, supra*, 173 Cal.App.4th at pp. 1497–1498.)

We review an order granting a DVRO for abuse of discretion. (*Nadkarni, supra*, 173 Cal.App.4th at p. 1495.) And as *Evilsizor* also noted:

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<sup>1</sup> Statutory references are to the Family Code.

“In considering the evidence supporting such an order, ‘the reviewing court must apply the “substantial evidence standard of review,” meaning “ ‘whether, on the entire record, there is any substantial evidence, contradicted or uncontradicted,’ supporting the trial court’s finding. [Citation.] ‘We must accept as true all evidence . . . tending to establish the correctness of the trial court’s findings . . . , resolving every conflict in favor of the judgment.’ ” [Citation.]’ (*Burquet v. Brumbaugh* (2014) 223 Cal.App.4th 1140, 1143.)” (*Evilsizor, supra*, 237 Cal.App.4th at p.1424.)

Our review under the abuse of discretion standard is based on well-settled principles, including these from the Supreme Court: Discretion is “abused” only when, in its exercise, the trial court “ ‘exceeds the bounds of reason, all of the circumstances before it being considered.’ ” (*Denham v. Superior Court, supra*, 2 Cal.3d at p. 566; see *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 773 [“A ruling that constitutes an abuse of discretion has been described as one that is ‘so irrational or arbitrary that no reasonable person could agree with it’ ”].) And as that Court put it almost 100 years ago, “abuse of discretion is never presumed and it must be affirmatively established.” (*Wilder v. Wilder* (1932) 214 Cal. 783, 785.) Robertson has not established it.

Similarly, an order awarding custody is reviewed for abuse of discretion. (*Montenegro v. Diaz* (2001) 26 Cal.4th 249, 255; *Chalmers v. Hirschkop* (2013) 213 Cal.App.4th 289, 299–300.) Here again, Robertson has shown no abuse.

## **DISPOSITION**

The order is affirmed.

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Richman, J.

We concur:

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Kline, P.J.

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Miller, J.

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